



Agenda Item Number: 2005-1-7

BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS

Meeting Date: January 11, 2005

Department: County Manager **Staff Contact:** Thaddeus Lucero, County Manager
Dan Mayfield, Comptroller

TITLE: Public hearing on Low Income Property Tax Rebate Pursuant to NMSA 7-2-14.3

ACTION: Receive public testimony on adopting property tax rebate by County ordinance.

SUMMARY:

NMSA 7-2-14.3 requires that the Board conduct a public hearing on the question of whether the municipal and County property tax rebate should be adopted.

Taxpayers with a modified gross income less than \$24,000, residing in counties that have enacted a low income property tax rebate ordinance in accordance with NMSA 7-2-14.3 will be eligible to apply for a state property tax rebate after the year 2000. The maximum rebate available for each taxpayer is \$350. Married taxpayers filing individual returns may each claim only one-half of the income tax rebate. In order to qualify for this rebate, the taxpayer must:

1. Have his or her principal place of residence in a county that has adopted a low income property tax rebate ordinance;
2. Not be a dependent of another individual;
3. File a New Mexico state income tax return with a modified gross income less than \$24,000; and,
4. Not be an inmate in a public institution for more than six months during the taxable year in which the rebate is claimed.

The taxpayer's modified gross income is computed on New Mexico income tax form PIT-1-RC as the sum of the following, less exemptions:

1. Wages, salaries, tips, etc.;
2. Social Security benefits, pensions, annuities and Railroad Retirement;
3. Unemployment and Worker's Compensation benefits;
4. Public assistance, TANF, welfare benefits and Supplemental Security Income (SSI);
5. Net profit from business, farm or rentals (if loss enter zero);
6. Capital gains undiminished by capital losses;
7. Gifts of cash or marketable tangible items received;
8. All other income, such as interest, dividends, gambling winnings, insurance settlements, scholarships, grants, VA benefits, trust income and inheritance, alimony or child support.

The State of New Mexico Taxation and Revenue Department will issue the low-income municipal and County property tax rebate to the taxpayer. The Taxation and Revenue Department will provide an accounting and issue an invoice to the County for rebates granted to

County residents. The County is responsible for payment of the entire amount, including the municipal taxes rebated, within thirty days. If the County does not pay the certified amount the department may enforce collection and may withhold the amount from County revenue distributions.

The current legislation does not identify a source of funds for counties adopting a low-income property tax rebate ordinance. If an ordinance is adopted, Bernalillo County will be responsible for rebating taxes collected for all of the fifteen entities for which it collects taxes. The County does not have the option to bill any of the other governmental entities for the rebated taxes. The rebate payment must be made from the County's existing revenue or its taxing authority. It is estimated that the rebate might cost Bernalillo County between \$2,500,000 and \$11,950,000 per year. This represents 3.4% to 16.6% of current annual property tax revenues. This fiscal year, property tax revenue is projected to decrease by 1.39%. The property tax rebate would represent 2% to 10% of the total general fund budget. If part of the general fund budget is rebated, general fund revenue will not be sufficient to meet the normal inflationary increases and the additional goals and priorities established in the FY05/06 biennial budget.

When the low-income property tax rebate legislation was enacted, taxing authority under NMSA7-2-14.4 was also provided. Under this statute the Board of County Commissioners may, by resolution, submit to the voters the question of imposing an additional property tax, not to exceed one mill, to fund the rebate. The question cannot be submitted to the voters until an ordinance allowing the low-income property tax rebate is in effect. If the voters do not approve the tax, the county would still be liable for the rebate payment to the state. If the County chooses to pass a low-income property tax rebate ordinance, the county attorney recommends a one-year postponement of the effective date of the rebate to allow sufficient time to conduct the mill levy election. The County Attorney also recommends providing sunset language in the ordinance so that the ordinance would be automatically repealed if the election fails.

ATTACHMENTS:

1. NMSA 7-2-14.3 (Low Income Property Tax Rebate)
2. Copy of notice published in the Albuquerque Journal January 11, 2005

FISCAL IMPACT

It is estimated that the rebate might be as much as \$11,950,000. Bernalillo County will be responsible for making payment to the State for the amount rebated from its own resources. The rebated amount includes taxes that were distributed to fourteen other governmental entities. However, the County is not allowed to charge any of the entities for the rebated taxes.

STAFF ANALYSIS SUMMARY

COUNTY MANAGER

As stated, State Statute requires the public notice and public hearing. Management has proposed amending the statute to allow all entities to contribute their share of the tax rebate were the Board to adopt the Low Income Property Tax Rebate. It is unfair for the County to bear the entire loss of revenue. I recommend that the Board hold the public hearing but not to adopt the property tax rebate until the legislation is amended. TL 1/5/05

LEGAL

NMSA 7-2-14.3 through 7-2-14.5 provide for a tax rebate of a portion of property taxes due from low-income taxpayers. The County of Bernalillo can choose to approve a rebate ordinance or not approve a rebate ordinance. If the County of Bernalillo enacts such an ordinance, it will have to pay the State of New Mexico the total cost of the rebated income taxes to state income tax revenues from the County of Bernalillo without a revenue source to fund this repayment. Subsection H of NMSA 7-2-14.3 provides that the Bernalillo County Commission can specify the first taxable year to which the ordinance is applicable.

NMSA 7-2-14.4 provides that the County of Bernalillo can fund the rebate amount by imposing a property tax not to exceed one mill. There is some difficulty in that the mill levy can only be imposed after submitting the question to the voters of Bernalillo County and this resolution cannot be considered by the County until after the ordinance granting the rebate has been put into effect. The result of this time requirement is that the County of Bernalillo enacts an ordinance, grants the rebate, and then may have its voters reject the mill levy to fund the rebate with. Therefore, the County of Bernalillo would suffer a decrease in its available revenues equal to the amount of the rebate it has to pay back to the State of New Mexico. Therefore, if the County of Bernalillo chooses to pass such an ordinance, it should postpone its effective date for at least one taxable year, conduct an election on a mill levy to fund the rebate during that time, and provide sunset language in the ordinance so that the ordinance would be automatically repealed if the election were to fail.

This Statute also permits imposition of the mill levy if the County of Bernalillo has not adopted an ordinance imposing a transfer tax pursuant to the provisions of the Transfer Tax Act upon property transfers occurring in any property tax year for which the property tax rebate is to be in effect. Approved as to form TDC 12/27/04

FINANCE

State funding is not provided to offset the low-income property tax rebate. The county must therefore pay for the rebate out of existing resources or hold an election to raise the property tax mill rate. At current property valuation levels, an additional 0.248 mills would be required to generate an estimated rebate of \$2,500,000 and 1.184 mills would be required to generate an estimated rebate of \$11,950,000. A home assessed at \$100,000 would experience a tax increase of approximately \$8.18 to \$39 per year if the voters approve the additional property tax under NMSA 7-2-14.4.

If the low-income property tax rebate ordinance is adopted I recommend postponing the effective date one taxable year (to 2006). In the meantime an election in accordance with NMSA 7-2-14.4 to impose an additional property tax, not to exceed one mill, can be held. The ordinance should include language that would automatically repeal the ordinance if the election fails. Stella Lujan, CPA, Finance Systems Director 12/20/04